

The Prohibitory Law.

WALLACE.
COURT OF SPECIAL SESSIONS.
The Judge, Wallace—The accused is not

on a complaint preferred at the Second District charging him with having sold half a gill of in violation of the "Act for the prevention of Pauperism and Crime." The case was heard at the Special Sessions, in pursuance of the provisions of the "Act to enlarge the jurisdiction of the

General and Special Sessions of the Peace for the city and county of New York." The accused being asked to be tried by the Court of General Sessions, he declined to do so.

The General Sessions of the Peace for the city and county of New York shall have power to hear, determine and give judgment in all cases, according to law, all complaints for misdemeanors, except those which shall possess exclusive jurisdiction hereunder, and to receive and try all persons to be sent to the Court of General Sessions of the Peace for the city and county of New York as the accused, when arrested and brought before the Court of General Sessions of the Peace, as determined by the Court of General Sessions of the Peace for the city and county of New York; and it is the duty of the Court of General Sessions of the Peace for the city and county of New York to comply with all the provisions of this section.

At the Court of General Sessions of the Peace for the city and county of New York, the following case was called for trial: the defendant, appeared by counsel, Messrs. Tomlinson and Taylor, and the State, by a District Attorney, who was heard by the jury, with the exception therein made in Special Sessions of the Peace, and the jury

[illegible][illegible][illegible][illegible]

the Court of General Sessions of the Peace there is no law authorizing the committing to bail for appearance to answer in court. How, if he refuses, can the accused answer at the Special Sessions? This is especially challenged by the defence, I

any cause—in prison or upon bail—
 art can be tried by a single Judge, notwithstanding
 at the time he is required to go upon his
 against the exercise of such authority, an
 his guilt or innocence shall be found by
 not think he can, but may at any time—laun
 a jury, and if refused and is tried by th
 his will, he can appeal from a judgment o
 General Sessions. Not only is this the la
 upon principle and constitutional right, bu
 is the Legislature been of its administrati
 that they have secured it by statute. See
 23rd of article 2, title 3d, part 4th, secou

...ates provides, in treating "of Courts of Sessions in the city and county of New York," that "any person tried and sentenced according to the provisions of this article, without having demanded such appeal from such sentence to the Courts of Sessions in the city and county of New York; that 'such appeal must be made at the time the sentence is pronounced; and thereupon such conviction shall be void.'" I know very well that Courts of Sessions

of New York, have the power to empanel a jury, not of two persons; but that the law has authorized them to do so at all times, whether in any or other county, no more bound to be tried by a jury of than twelve, than he is by three justices; if a single judge he may refuse all, be it one or two, and call for as many as he please; Judge Parker, at Albany, in the case of *People v. Van Hook*, said, "I am of opinion, in the consideration of this subject, we understand it is declared by the Constitution, (art. I, sec. 2.) 'The trial by jury which it has been heretofore used, shall remain inviolable.' The words 'heretofore used' are used," "in use at the time of the Constitution." What is meant by it? Trial by jury?" Does it mean a committee men, or a jury of six men, as pro-

point. If the Legislature may reduce to six, they have the same right to number to one, and thus make a jury of one with the requirement of the Constitution. The Court of Appeals have recently expressed in *Cruiger vs. The Hudson River Railroad* (Kernan R. 198,) Johnson J., says: "When spoken of in connection with trial and second section of the same article, imports a jury, whose verdict is to be unanimous, its accretion to every one acquainted

ory of the common law, and aware of the
tion in which that institution, so constitute
a period been held." (See also 3 Engli
s. Cox; 5 Smedes and Marshall, 654; 3 I
4 Wheaton R., 242-3-4; 10 Wendell, 457
153). If, then, this Court of Special Se

jurisdiction for the trial of Wallace, inability to afford him such a jury as that which the fifth section of the criminal code requires, and the absence of any assignment of his jurisdiction, and in pursuance of the complaint was brought into the Court by the Police Justice because deprived of the right of the fourth section of the present Act to hold a Court of Sessions in pursuance of its provisions, is, for practical effect, inoperative—where shall I be heard and determined, without encounter of doubt in respect to the legality of trial by jury, and the right of the accused to a jury (twelve men), which Wallace demands. I think he is entitled, he clearly cannot judge, nor yet by the Special Session for the suppression of Intemperance, and the Court of Sessions, and the Court of Criminal Justice, in the exercise of their jurisdiction, to refuse him any, to refuse to

for the trial of other musulmans in the State, which of course would limit this manner to six persons. Where, then, shall he be tried? Clearly in the Court of General Sessions. In addition to the reasons mentioned in this case must take, is the fact that he is convicted of selling the quantity of opium in the complaint, the law against which it is also declared that in the conviction a penalty of fine or imprisonment, all his other rights are forfeited, and is to be degraded in view of both the law and the facts. It might not be deprived of a trial by a jury. This case will therefore be taken in the General Sessions of the Peace for the next term. An order will be entered.